

## SENATE BILL No. 526

### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 23-2.

**Synopsis:** Loan brokers and broker dealers. Allows the Indiana securities commissioner to select up to 25% of all Indiana home and branch offices of registered broker-dealers for completion of compliance reports instead of requiring at least 25% all Indiana home and branch offices of registered broker-dealers for completion of compliance reports. Increases the cost of loan broker registration from \$100 to \$200. Requires the security commissioner to retain the initial or renewal application fee paid for any license application that is withdrawn or denied. Creates the loan broker regulation account in the state general fund. Provides that all of the fees and funds, other than the costs of investigations and civil penalties recovered under the loan broker statute, must be used for the regulation of loan brokers. Provides that the anti-fraud provisions of the loan broker laws apply to registered and unregistered loan brokers.

**Effective:** July 1, 2001.

### Long

January 22, 2001, read first time and referred to Committee on Commerce and Consumer Affairs.

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First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## SENATE BILL No. 526

A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 23-2-1-10 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 10. (a) A registered  
3 broker-dealer shall make and keep accounts, correspondence,  
4 memoranda, papers, books, and other records as the commissioner  
5 requires by rule or otherwise. The commissioner's requirements may  
6 not exceed the limitations provided in Section 15 of the Securities and  
7 Exchange Act of 1934 (15 U.S.C. 78o).  
8 (b) An investment adviser shall make and keep accounts,  
9 correspondence, memoranda, papers, books, and other records as the  
10 commissioner requires by rule or otherwise. The commissioner's  
11 requirements may not exceed the limitations provided in Section 222  
12 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-18a). The  
13 commissioner may prescribe by rule or otherwise the period that an  
14 investment adviser must retain records.  
15 (c) All the records of a registered broker-dealer or an investment  
16 adviser are subject at any time to reasonable periodic, special, or other  
17 examinations by representatives of the commissioner, within or without



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1 Indiana, as the commissioner deems necessary or appropriate in the  
 2 public interest or for the protection of investors. No charges or other  
 3 examination fees may be assessed against a registered broker-dealer or  
 4 an investment adviser as a result of an examination under this  
 5 subsection unless the examination results in an investigation or  
 6 examination made under section 16(d) of this chapter. To avoid  
 7 duplication of examinations of records, the commissioner may  
 8 cooperate with the securities administrators of other states, the  
 9 Securities and Exchange Commission, and any national securities  
 10 exchange or national securities association registered under the  
 11 Securities and Exchange Act of 1934 (15 U.S.C. 77b et seq.).

12 (d) Every registered broker-dealer and investment adviser shall file  
 13 financial reports and other reports as the commissioner by rule or order  
 14 prescribes. The commissioner's reporting requirements for registered  
 15 broker-dealers may not exceed the limitations provided in Section 15  
 16 of the Securities and Exchange Act of 1934 (15 U.S.C. 78o). The  
 17 commissioner's reporting requirements for investment advisers may not  
 18 exceed the limitations provided in Section 222 of the Investment  
 19 Advisers Act of 1940 (15 U.S.C. 80b-18a).

20 (e) If the information contained in a document filed with the  
 21 commissioner is or becomes inaccurate or incomplete in any material  
 22 respect, the registrant shall promptly file a correcting amendment.

23 (f) The commissioner may require investment advisers to furnish or  
 24 disseminate certain information necessary or appropriate for the public  
 25 interest or to protect investors or clients. The commissioner may  
 26 determine that the information furnished to clients or prospective  
 27 clients of an investment adviser under the Investment Advisers Act of  
 28 1940 (15 U.S.C. 80a-1 et seq.) and the rules adopted under the  
 29 Investment Advisers Act of 1940 may be used to satisfy this  
 30 requirement.

31 (g) The commissioner ~~shall~~ **may** annually select ~~a total of as many~~  
 32 **as** twenty-five percent (25%) of all Indiana home and branch offices of  
 33 registered broker-dealers for completion of compliance reports. The  
 34 offices shall be selected at random. Each broker-dealer office that is  
 35 selected shall file its compliance report according to rules adopted by  
 36 the commissioner under IC 4-22-2 not more than ninety (90) days after  
 37 being notified of selection under this subsection. No charges or other  
 38 examination fees may be assessed against a registered broker-dealer as  
 39 a result of the examination of a compliance report filed under this  
 40 subsection unless the examination results in an investigation or  
 41 examination made under section 16(d) of this chapter.

42 SECTION 2. IC 23-2-5-5, AS AMENDED BY P.L.230-1999,



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SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 5. (a) An application for license or renewal of a license must contain:

- (1) consent to service of process under subsection (e);
- (2) evidence of the bond required in subsection (b);
- (3) an ~~initial~~ **application** fee of two hundred dollars (\$200);
- (4) an affidavit affirming that none of the applicant's ultimate equitable owners, directors, managers, or officers have been convicted, in any jurisdiction, of an offense involving fraud or deception that is punishable by at least one (1) year of imprisonment, unless waived by the commissioner under subsection (f);
- (5) evidence that the applicant, if the applicant is an individual, has completed the education requirements under section 21 of this chapter;
- (6) a registration form setting forth the name, home address, home telephone number, and Social Security number of each employee or prospective employee of the applicant who is or who will be engaged in origination activities; and
- (7) evidence that the license applicant's proposed registrants have completed the education requirements of section 21 of this chapter.

(b) A licensee must maintain a bond satisfactory to the commissioner in the amount of fifty thousand dollars (\$50,000), which shall be in favor of the state and shall secure payment of damages to any person aggrieved by any violation of this chapter by the licensee.

(c) The commissioner shall issue a license to an applicant that meets the licensure requirements of this chapter. Whenever the registration provisions of this chapter have been complied with, the commissioner shall issue a certificate of registration authorizing the registrant to engage in origination activities.

(d) Licenses issued by the commissioner before January 1, 2001, shall be valid, and renewal of such licenses shall not be required until January 1, 2001. Individuals engaging in origination activities for a licensee before January 1, 2001, shall not be required to apply for and receive a certificate of registration until January 1, 2001. Except as otherwise provided in this subsection, licenses and certificates of registration issued by the commissioner are valid until January 1 of the second year after issuance. The education requirements of section 21 of this chapter shall first apply to applicants for issuance or renewal of licenses or registrations effective as of January 1, 2001.

(e) Every applicant for licensure or for renewal of a license shall file

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with the commissioner, in such form as the commissioner by rule or order prescribes, an irrevocable consent appointing the secretary of state to be the applicant's agent to receive service of any lawful process in any noncriminal suit, action, or proceeding against the applicant arising from the violation of any provision of this chapter. Service shall be made in accordance with the Indiana Rules of Trial Procedure.

(f) Upon good cause shown, the commissioner may waive the requirements of subsection (a)(4) for one (1) or more of an applicant's ultimate equitable owners, directors, managers, or officers.

**(g) Whenever an initial or renewal application for license is denied or withdrawn, the commissioner shall retain the initial or renewal application fee paid.**

SECTION 3. IC 23-2-5-6, AS AMENDED BY P.L.230-1999, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 6. ~~(a)~~ A licensee may not continue engaging in the loan brokerage business unless the licensee's license is renewed biennially. A registrant may not continue engaging in origination activities unless the registrant's certificate of registration is renewed biennially. A licensee shall renew its license and the certificates of registration of its registrant employees by filing with the commissioner, at least thirty (30) days before the expiration of the registration, an application containing any information the commissioner may require to indicate any material change from the information contained in the applicant's original application or any previous application.

~~(b) The fee for renewal of a registration is one hundred dollars (\$100) per year, to be paid biennially when an application for renewal is filed.~~

SECTION 4. IC 23-2-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 7. **(a) The loan broker regulation account is created in the state general fund. The money in the loan broker regulation account may be used only for the regulation of loan brokers under this chapter. The loan broker regulation account shall be administered by the treasurer of state. The money in the loan broker regulation account does not revert to any other account within the state general fund at the end of a state fiscal year.**

**(b) Except as provided in subsection (c), all fees and funds accruing from the administration of this chapter shall be accounted for by the commissioner and shall be deposited with the treasurer of state who shall deposit them in the loan broker regulation account in the state general fund.**

**(c) All expenses incurred in the administration of this chapter shall**

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1 be paid from appropriations made from the state general fund.  
 2 However, costs of investigations and civil penalties recovered under  
 3 this chapter shall be deposited in the securities division enforcement  
 4 account created under IC 23-2-1-15. The funds in the **securities**  
 5 **division enforcement** account shall be available, with the approval of  
 6 the state budget agency, to augment and supplement the funds  
 7 appropriated for the administration of this chapter.

8 SECTION 5. IC 23-2-5-20, AS AMENDED BY P.L.230-1999,  
 9 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 10 JULY 1, 2001]: Sec. 20. A ~~licensee or registrant~~ **person** shall not, in  
 11 connection with a contract for the services of a loan broker, either  
 12 directly or indirectly, do any of the following:

- 13 (1) Employ any device, scheme, or artifice to defraud.
- 14 (2) Make any untrue statements of a material fact or omit to state  
 15 a material fact necessary in order to make the statements made, in  
 16 the light of circumstances under which they are made, not  
 17 misleading.
- 18 (3) Engage in any act, practice, or course of business that operates  
 19 or would operate as a fraud or deceit upon any person.
- 20 (4) Collect or solicit any consideration, except a bona fide third  
 21 party fee, in connection with a loan until the loan has been closed.

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